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ABSTRACT

Designed to provide a historical perspective on consumerism in higher education, this literature review considers consumer laws, student rights and responsibilities, institutional practices, and major issues related to consumerism and its impact on students and colleges. After an overview of the purposes, scope, and limitations of the paper, the legal rights and responsibilities of educational consumers and institutions are reviewed, with special focus on federal legislation and California laws enforcing consumer rights. Next, studies, reports by government agencies and professional associations, and conference proceedings provide the basis for a discussion highlighting several consumerism issues, including fraudulent and misleading advertising and brochures; unfair recruitment practices; degree mills; tuition refund policies; federal assistance programs; student abuses; the community college open door's effect on consumerism; student responsibilities; accuracy and security of records; and tie-in funding. Finally, recommendations are presented, such as the identification of institutional activities that may lead to consumer abuses, the preparation of statements to help employees in avoiding such abuses, needs assessments of all campus programs, a monitoring of students' course and program selection for compatibility with their potential, and the development of regulations to minimize cheating, sporadic attendance, vandalism, and theft. (HB)

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CONSUMERISM IN THE COLLEGES

Presented to

Dr. Alice Thurston
Pepperdine University

April 1981

For Partial Fullfillment of the

Requirements for

Education 711 - Student Personnel Services

By

Regene L. Mitchell

JC 810 450

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CHAPTER I

INTRODUCTION

Until recently, many educators, public officials, and consumer activists used the terms "consumerism" and "consumer education" interchangeably. Consumer Education suggests the receiving of information while Consumerism serves a broader function of describing the act of consuming. Consumerism is not limited, as previously thought, to marketplace activities of buying, selling and using products. The key to the true definition can be found in the word "use". This takes consumerism beyond the scope of the marketplace and the household into space, air, time, etc. usage.

We are consumers from the moment the sperm pierces the ovum to infinity, for we consume space and nourishment in the womb and continue to consume space, even after death. In the interim, we are using the air we breathe, the space we use, time (ours and others), products, goods and services.

Education is now viewed as a product of the schools, colleges and universities. Counseling, placement and other campus extra curricular programs/services are used by consumers, the students.

The inflation and recession of the 1970's, coupled with a decrease in public financial support (bond issue failures and the "tax revolt"), ignited the ever-present financial crisis in public community colleges. Enrollment declines, particularly where funding is based on average daily attendance, has caused a flurry of competition for students by

colleges and universities. Numerous new programs recruitment and marketing strategies were initiated. The institutions of higher education joined the ranks of "big business". According to the National Commission of Financing of Postsecondary Education, even in 1971, postsecondary education was a 30 billion dollars per year industry.

There are three major aspects of student consumerism:

1) The student as a consumer in the general society. The student functions in the marketplace buying, selling, using, essentials, as well as services and products desired;
2) The student is a consumer of the specific products (education) and services (student affairs programs) offered by the institution.
3) The student as a consumer who enter contracts with the educational institution, via several documents, among those are:
    1) Information in catalogs, flyers and other promotional materials.
    2) Student conduct and responsibility codes (written).
    3) Financial and documents i.e., grants, loan conditions of eligibility and repayment.

Recently there have been vigorous discussions regarding student consumer rights and responsibilties in their relationship with the institutions of higher educations.

According to Buchanan and Lamb the legal rights of

students could be summed up stating the following. "The student consumer has;

1) The right to be correctly informed through institutional catalogs and publications
2) The right to choose courses and programs based on timely and accurate information prior to and during enrollment and registration
3) The right to safety and equitable treatment during college attendance
4) The right to be heard through due process.[1]"

However, questions are continually raised in higher education regarding recruitment techniques, accuracy of catalog information; effectiveness of services (counseling, placement, etc.), record keeping procedures at the institutions, financial aid abuse and students committment to themselves in the educational process.

Low retention rates, large remedial education programs, grade inflation, and students' complaints of unfulfilled promises were indicators of marked deterioration and potential consumer abuse in higher education.

Purpose of the Paper

This investigative paper is designed to provide a historical perspective of some of the factors relating to consumerism in higher education; consumer laws, students rights and responsibilities and insitution practices will be discussed. A major focus will be placed on California Community Colleges.

Methods of Research

The writer will attempt to identify major issues

regarding consumerism and its impact on both the students and the colleges.

This task is to be accomplished by a review of literature related to the issues and problems. Conclusions will be drawn, and recommendations will be made to solve and/or forestall problems identified in the review of literature.

Scope and Limitations

The writer does not pretend to cover the multifaced, complex questions involving all student/institution consumer related activities of institutions of higher education, or more specifically California Community Colleges. However, issues will be raised (regarding consumerism in colleges) that lead to a better understanding of the laws protecting both students and institutions.

Most of the available literature (on the subject of student consumerism) is based on the diverse consumer-oriented practices of institutions of higher education throughout the country. Although consumer protection should be universal, it is impractical if not impossible to draw conclusions and/or suggest solutions which would be applicable to all situations in higher education.

The sub-topics (discussed in the review of literature) are not, by any means, treated with the breadth and depth they would deserve as separate entities. They were simply used as sources to identify the issues and add validity to the recommendations the writer will make at the conclusion of the study.

CHAPTER II

REVIEW OF LITERATURE

The United States Constitution State Constitutions, and College District policies serve to strengthen the "agreements" between the consumers (students) and the producers (college districts) in the community colleges.

In recent years, there has been a growing concern about the "gray areas" in the protection of student rights. The "gray areas" could be described as student-institution issues where no precedents have been established, and laws (statutes) do not specifically outline the roles and responsibilities related to consumer protection. In many instances common law prevails when new cases are argrued in the courts.

The following are laws, statutes, regulations (and regulatory agencies) and precedents established as the result of recent student consumerist activities:

- Title IV of the Civil Rights Act of 1964 prohibits discrimination on the bases of race, color or creed.
- Title IX of the Higher Education Amendment prohibits discrimination on the basis of sex or blindness.
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination of the handicapped "otherwise quality individual."
- Higher Education Amendment of 1976 requires colleges to give better information on financial aid and costs; improve data on graduates and student placement for the last three years; and provide accurate information in college catalogs and publications.[2]

Educational institutions are subject to and guardians of of numerous written, verbal and implied contracts and warranties between the students and the schools, colleges and universities. Further, in California (and most other states), as indicated earlier, the Education Code specifically outlines many of the functions, duties and responsibilities of the institutions and the students, as national laws in addition to those previously mentioned. They are as follows:

- California Education Code 29035 - Limitations on groups offering training to adults: No person, firm, association, partnership, or corporation owning or representing any private school offering training to adults shall: (a) Make or cause to be made, any statement, or representation, oral, written, or visual, in the connection with the offering of, publicizing of a course, if such person, firm, association, partnership, or corporation knows, or reasonably should have known, the statement or representation to be false, deceptive, inaccurate, or misleading. (b) Promise or guarantee employment utilizing information, training skills purported to be provided or otherwise enhanced by a course. (c) Advertise concerning job availability, degree of skill and length of time required to learn a trade or skill unless the information is accurate and in no way misleading. California Education Code, Sec. 29035 (Private Institutions).[3]

- Executive Order by President Kennedy-False and Misleading Advertising:

- Magna Carta: Consumers have a right to be informed, to be heard, to choose and to safety. Declared 1962 by the late

President of the United States, John F. Kennedy. (FTC rule)

- California Education Code

- Educational Counseling: The Community Colleges should provide "educational counseling in which the student is assisted in planning and implementing his/her immediate and long range educational program." California Educational Code, Section 72620 a. (public)

- Career Counseling: The community colleges should "provide" career counseling in which the student is assisted in assessing his/her aptitude, abilities, and interest in order to make realistic career decisions. California Educational Code, Section 76260. b. (public).[4]

- SCOPE OF INSTRUCTION; Instruction by Public Community Colleges shall offer instruction through, but not beyond the second year. These institutions may grant the associate of arts and associate of science degree. Their programs may include, but shall be limited to: standard collegiate courses for transfer to other institutions; vocational and technical fields leading to employment; general or liberal arts courses; and community services.

- DUE PROCESS: The United States Constitution, 14th amendment states "no identifiable right can be taken away."

Contract Law: Previously, the courts have been "disposed to find that provisions of the student-college contract were to be found in all statements contained in such documents as the student's application for admission, the registration form, the college catalog, and formal statements of college rules and regulations. The rather obvious question to be raised to

this approach (of considering the catalog brochures, etc. contracts) under the status of Fraud.[5]

- FIDUCIARY: (Recruitment and Counseling).

as a fiduciary: "One whose function is to act for the benefit of another as to matters relevant to the relationship between them." Since schools exist primarily for the education of their students, it is obvious that professors and administrators act in a fiduciary capacity with reference to the students. One of the duties of the fiduciary is to make full disclosures of all relevant facts in the transaction between them.

THE ISSUES:

The first major assembly of educators, consumer advocates, and public officials was held, in 1974, to discuss the rights of consumers of postsecondary education. The primary purpose was to identify needed safeguards, statutes, and state regulations to insure the delivery of accurate information, education, and services by the institutions.[7]

Many well known national figures attempted to shed light on the problems by expressing their perceptions of the issues. Helen E. Nelson, past president of the Consumer Federation of America suggested:

> "The false cry of academic freedom can be held as a shield by educational entrepreneurs to force elected government representatives to back off from taking measures to give consumers a fair chance."[8]

William A. Goddard, Executive Director of the National Association of Trade and Technical Schools more specifically outlined problems. He stated:

> "Consumer protection organizations are becoming aware of advertising and promotional efforts by respected universities, colleges, and other traditional institutions that are soliciting prospective students through unorthodox and sometimes questionable tactics."[9]

N. Edd Miller, president of Portland-Gorham, attempted to focus on the educators' role in providing consumer protection to students. He stated:

> "Each institution, everyone of us, has a real and present obligation to assess our own institutions, to be certain that we, individually, are providing the right kind of climate for effective learning that, we are doing the best job we can through our teaching programs, through our activities, through our service people. If we take this task seriously and do it well, then we will be offering the right kind, the best kind of protection to our customers."[10]

The major issues discussed at that conference were: improvement of accurate, relevant information about services and programs to allow informed judgement; public policy interest or involvement in the recruitment practices; which level of government should this be manifested? should there be public policy provisions insuring the existence of learning contracts between postsecondary institutions and students, spelling out what students should excpect to receive and what the institutions expectations are of its students; should students be involved in collective bargaining; etc.[11]

A draft study of the U.S. Office of Education Task Force on Educational Consumer Protection was presented at the conference. The study inventoried twenty-five possible consumer concerns; of these, five were considered major:

1. Fraudulent and Misleading Advertising;
2. Misleading solicitation and recruitment practices;
3. Degree Mills;
4. Tuition refund policies;
5. Federal education assistance program such as the Federal Insured Student Loan Program.

Among the other concerns, listed in the twenty-five, the following are also related to this paper: lack of available jobs upon graduation; lack of provisions for due process; arbitrariness in adminsitrative policies and practices; inadequate academic or personal counseling service; and listing of nonexistent faculty and courses in college catalogs.[12]

There were eleven major recommendations of the conference: of these the attendees called for consumer protection legislation related to colleges; opportunties for student redress; an information clearinghouse system in accessible geographic locations (sponsored by the Federal Government) to provide needed information regarding career opportunities; etc.; for students, improved job placement programs, and continued review of standards by the Office of Education, HEW, the Veterans Administration and the State Department of Consumer Affairs. It was also suggested that those institutions failing to comply with the regulations should forfeit federal funds.[13]

An extensive report by the Carnegie Council, "Fair Practices in Higher Education", revealed the problems were persisting and increasing. The Council related misleading advertising, cheating (by students) and grade inflation to the "eroding public support". The Council feared that:

"desperate efforts to enroll and retain students in the 1980's and 1990's could accelerate the ethical deterioration already apparent in some parts of academic life. The Council proposed to insure "fair practices" through:

> "voluntary full and complete disclosure, and provide students with complete and accurate information on all pertinent aspects of institutional practices; a code of Rights and Responsibilities through the collaborative efforts of administrators, faculty and students; The codes would include the subject of admissions, recruiting, advertising, financial aid, tuition, record keeping, instruction, academic requirements, grievance procedures, support services and student conduct."[14]

Shortly after the Carnegie Council report was published, The Higher Education Daily (June 23, 1979) reported that the American Council of Education and ten other higher education groups joined to support guidelines on refunding student charges. The CE board of directors also supported a series of principles of "good practices" in college admissions and recruitment practices developed by the National Association of Collegiate Registrars and Admissions Officers, College Entrance Examination Board, National Association of College Admissions Counselors and the National Association of Secondary School Principals.[15]

Most college administrators believe that recruitment and marketing programs can be effective without abuse. Frank Welch, president at Lincoln Memorial University, Tenn. in his presentation "Not Brochures and Jingles" stated:

> "Marketing for colleges is targeting needs and wants to an institution's ability to serve and then presenting the product aggressively. Marketing is <u>not</u> advertising a catchy jingle, brochure or "high pressure" decision-making."[16]

In June 29. 1979 article of the Higher Education Daily, it was reported that attorneys are advising institutions to review enrollment procedures and faculty contracts. Attorney Richard Fulton, Washington D.C. suggests:

> "Such review is becoming necessary as common law understanding of the enrollment agreements give way to federal intervention and the student consumer movement. Have your ciients be careful what they say in their catalogs, because careless statements open the door to the Federal Trade Commission, The Veterans Administration, HEW and Student Consumer. They should say what they mean and mean what they say, to avoid lawsuits over tuition increases and refunds, program changes and procedures for dismissal on academic or nonacademic grounds."[17]

Elmer Roller, counsel at Wayne State University, supported Fulton's views by adding:

> "You must review what is in your catalog, circulars, your bulletins, because you may unknowingly be granting property rights requiring due process procedures before changes are made. Rigid principles of contract law will not apply to enrollment agreements but courts will look for written policies reasonably and consistently applied."[18]

A large number of educators and administrators do not see the need to discard brochures as a method of advertising. Theodore J. Marchese, director of institutional research at Barat College, Illinois, one of the pioneering better-information institutions stated:

> "Instead of just fancy pictures, we're trying to provide more accurate information."[19]

Many colleges and universities have focused on increased accuracy of information contained in brochures.

Truth-in-advertising is viewed as a major issue in recruitment. However, the problems of "unfair practices" is not limited to this one issue. In a recent article, "Raised

Standards Not marketing, Called Answer to College Woes", (Higher Education Daily 10-29-80) "a prominent" Harvard professor eluded to the holistic approach to solving the problems in postsecondary education. He stated:

> "Madison Avenue-style campaigns to attract students to colleges plagued by declining enrollments will lead only to a loss of integrity for the university..." He urged, "college leaders begin working immediately to help raise standards to all levels of education. For without action, the possibility exists that "demography may destroy integrity - that the predominant effect of a shrinking college market may well be to overcome the relative innocence of the past and present and to elicit the tawdriest of business competitive compulsion among colleges and universities -- especially the three self-protective admonitions: cut rates, cut corners, and cut throats."[20]

However, Dennis L. Jonhson in his article "Marketing The 'Un-Cola' College" suggests that if marketing is understood as student centered it will also be seen as a tool by responsive managment.[21]

The public Community College has traditionally been the most accesible institution of higher education. Many educators are beginning to realize accesibility alone does not insure success in college work.

The "open doors" of community colleges have often been referred to as the "revolving doors". The Open Door Policy simplified means "any student 18 years of older who can benefit from instruction is welcome to attend the communty college". The ODP issue was given serious consideration in "Consumerism Comes to The Community College". Vaughan stated:

> "As students exercise their choice to attend college in the free-enterprise atmosphere of American Society, they frequently make unwise decisions." He further

> stated: "While supporting the students "right to fail" we should recognize that many enter the community colleges open door ill prepared to make the wise career choices that would allow them to succeed". The high attrition rate of our students suggested that we are not "saving them" as well as we are recruiting them."[22]

R. Thomas Flynn in the same text stated:

> "The open-door policy" was not understood by current students, let alone prospective students or other members of the community. An obvious misconception was that because any high school graduate could enroll in college he/she could also enroll in any program."

Often students make unwise career decisions and/or course selections based upon glorified or misleading advertisement through written information by the college or "over zealous" recruiters. Still others select courses on whim or "passing" interest without consideration of the abilities and committment required to succeed. The California Education Code for community colleges specifically deals with this issue:

> "Guidance and counseling - California Ed. Code, Section 72620 "a" and "b" which requires guidance in making realistic career decisions and planning in California Public Community College."[24]

Beyond the activities mandated by the state, and implemented by the college, the student's role in the process cannot be ignored.

The student's responsibility to himself/herself and the institution is an important part of the education process. Caveat Emptor ("Let the Buyer [student] Beware") - Caveat Vendidor ("Let the Vendor [educators and institution] Beware"), translated, focuses on the issue that the student is not necessarily an innocent bystander in the contract between the

institution and himself/herself. The student in many instances victimizes himself/herself and/or the institution. The Carnegie Council (1979) suggested the following student responsibilities and institutional rights:

1) Learning needs and desires should provide the rationale for enrolling in academic programs. Students should not manipulate programs to achieve other ends.
2) The learner should be informed. Catalogs and other institutionally disseminated literature on academic programs should be read.
3) The learner should take an active part in planning and executing his or her academic program within the context of stated requirements and existing institutional resources.
4) The learner should continually monitor his or her academic progress.
5) The learner should attend class and participate in other learning activities, come prepared, and complete assignments on time.
6) The learner should seek out available academic support services such as basic skills instruction, job placement, and advising needed.
7) The principle of academic honesty should be embraced.
8) The freedom of the academic community to inquire, publish and teach should be respected.
9) The facilities and property of the academic community (i.e., buildings, books and computers) should also be respected.[25]

Too often the student neglects to read the information provided by the institution which could provide assistance in making realistic decisions. Further, many students reportedly shop for classes prior to registration, i.e., taking peer advice regarding "how easy or tough" the courses or instructions may be. Still others enroll in more than one class held at the same hour during the first couple of weeks alternate attendance to determine which class he/she will keep for the duration of the semester.

The Carnegie Council identified several negative aspects

of student consumerism, among them are:

1) Increased misuse of financial aid by students
2) Theft and destruction of student's valuable property, e.g., library books.[26]

In finacial aid matters, some students misrepresent their academic progress and/or educational intent. Often students leave the institution (or graduate) and fail to repay loans as agreed upon in the terms of the contract, e.g., NDSL. This reduces the availability of funds new students need to meet the cost of education.

Student Records:

There has been considerable controversy regarding the student's right to privacy of his/her records, falsification of the institutions records of student's grades and accessibility and maintenance of attendance and grades by instructors.

California Education Code, Chapter 1.5 Sections 76200-76246 details the regulations mandated by the state regarding Student Records. The purpose of the regulation is stated in Section 76200.

> "It is the intent of the Legislature to resolve potential conflict between California law and the provisions of Public law 93-380 regarding the confidentiality of student records in order to insure the continuance of federal education funds to public community colleges within the state and the revise generally and update the law relating to such records." (see appendix)[27]

The students records are considered a confidential matter between the individual student and the college. However, the college has a responsibility to fulfill public information needs. The community college must make available

to the student information and conditions regarding the privacy of his/her records. Generally this information is available in the College Catalog.[28]

The state laws were revised to become compatible with federal laws developed from the Buckley Amendment '74 which requires institutions of higher education to guarantee the student's right to privacy or foreit federal funds received by the institution.

The accuracy and security of student records has been essential (for institutions) in dispelling false claims by students, as well as protecting student rights.

The federal government pioneered consumer protection with tie-in funding.

Institutions failing to comply with the regulations outlined would subsequently, forfeit much needed funds.

The Education Information Centers program was established in 1978, with two-thirds funded by the federal government and one-third matching funds from states. Additionally, Health Education and Welfare, and the Office of Education used "tie-in" consumer protection and information rules as conditions for institutions receiving Vocational Education and Student Financial Aid monies. However, the problem of who should assume responsibility for monitoring and enforcement surfaced. In a report by the General Accounting Office in 1979 titled "HEW'S Student Aid Criteria Can't Stop Consumer

Abuse", the GAO found that the Office of Education relies on accreditation agencies to determine eligibility for student financial aid programs. GAO reported that accrediting groups do not believe they are responsible for continual monitoring of schools for compliance with federal regulations.

In a study of sixteen schools, the GAO found that all met eligibility requirements, but each followed at least one of eight potential abuses, i.e.,:

- encouraging enrollment through false and misleading advertising;
- failing to provide promised services such as job placement;
- listed courses or programs that were either unavailable or restricted; [29]

In essence many of the same abuses discussed five years earlier at the first national conference.

CHAPTER III

SUMMARY AND CONCLUSIONS

Most schools have enjoyed and deservedly so, good reputations. The past "integrity" cannot negate the need for consumer protection, no more than the present abuses can erase the past or present "good" in our postsecondary institutions.

The Carnegie Council (1979) reports many of the "positive aspects" of ethical conduct in Higher Education as revealed in their surveys conducted 1975-1976. They found that a large percent of the students are: 1) very serious about their schooling; 2) satisfied with the instruction they receive; 3) trust their teachers; 4) satisfied with the academic programs they have taken; 5) satisfied with the college they are attending; 6) students are learning as much as ever; 7) satisfied with the availability of their faculty and, both faculty and students are committed to developing ethical values in colleges while improving the state of educational justice.[30]

Of major concern is that each person placing his/her trust in the colleges' and universities' written and verbal statements, expects the institutions to deliver what they promised to deliver.

While the California Education Code makes no specific provision for the protection of student consumer's rights

with regard to recruitment policies in the public community colleges and universities the California Education Code, Section 29035 a, b, c specifically addresses these issues for private postsecondary institutions. Section 29035 prohibits "unfair practices and fraud". The provisions made in Section 29035 a, b, c exemplifies standards no less than the basics one could expect for a responsible delivery of information and guidance in public community colleges and unversities:

- accurate information in recruitment and marketing;
- follow-through on placement services;
- investigation of job availability and marketability of skills acquired in vocational education programs;
- degree of skills and length of time projected to acquire such skills. [31]

Further, the federal laws, statutes, and regulations outlined in the review of literature serve to provide consumer protection for students attending institutions of higher education, receiving federal funds. Some feel these regulations, etc. are necessary to curtail abuse by both institutions and students. Others feel that they are unwarranted impositions. Some of the abuses are the result of the overzealous, the uninformed, the careless and the desperate. The district is responsible for the actions of the "institution", regardless of who initiates, or for that matter, who approves (on local level) the various written documents, i.e., catalogs, brochures, etc. In most districts the catalogs, brochures

and other advertisements include the names of the board members on those documents. This is viewed by many as a personal stamp of approval by the board.

The question of liability has caused great concern among the legal counsel of colleges and universities.

One can anticipate increased consumer activism and government regulations to alleviate consumer abuse if the "unfair practices" continue in the schools.

Timothy Healy, Georgetown University President (October 1980) in his address, "How to Stay Free in a Regulatory Society?" suggests self-regulation:

> "We recognize only dimly that public money to carry out public purposes would create public accountability. College officials must take concrete steps to regulate themselves and keep government regulators off their doorsteps." He urged colleges to take a look at admission and recruiting practices. "Declining enrollments will cause greater competition among colleges and bring a "troublesome" erosion of admission standards. But a more serious problem is the unfair and improper recruitment practices, which, if we don't regulate ourselves, will certainly invite government action." [32]

One of the greatest fears of some college administrators is that increased consumer protection by statute, regulations and additions to the Education Code would diminish the "power" and autonomy of the institutions in postsecondary education, thereby curtailing innovations, stifling creativity, and increasing vulnerability.

Ralph Nader, nationally known consumer acitivist/advocate was quoted as saying: "I have a theory about power, that if it's going to be responsible it has to be insecure."[33]

CHAPTER IV

RECOMMENDATIONS

The Writer recommends the following:

1. Colleges should identify activities of the institution that could lead to consumer abuse; prepare statements for employees that would assist them in avoiding such abuse; sponsor inservice training (staff development) to acquaint the staff with the issues, i.e., counseling; grade inflation; recruitment; privacy; record keeping; brochures; catalogs, information , etc.

2. Institutions should conduct a needs assessment for all programs and courses introduced to the campus; periodic studies and surveys should follow, to determine whether or not the need continues to exist.

3. There should be vigorous monitoring of the student's selection of courses and programs for compatibility with his/her potential to succeed, i.e., remediation or prerequisite needs.

4. The student conduct regulations should be consistently enforced to minimize cheating, sporatic attendance, vandalism, theft, and disruptive behavior in and out of classes.

The Carnegie Council suggested the following techniques for alleviation of the problems.

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